**IN THE HIGH COURT OF DELHI**

**CRL.M.C.No.7474/2006**

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| # | B.K.Gupta | ..... | Petitioner |
| ! | through: | Mr. C.Mohan Rao, Adv. with<br>Mr. Deepak Khadaria, Adv.,<br>Mr. Praduman kumar Aggarwal, Adv. | |
| | | VERSUS | |
| $ | Ravinder Seth | ..... | Respondent |
| ^ | through: | Mr. G.D.Gandhi, Advocate | |

**CRL.M.C.No.5391/2005**

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| # | Asma Mahzar | ..... | Petitioner |
| ! | through: | Mr. C.Mohan Rao, Adv. with<br>Mr. Deepak Khadaria, Adv.,<br>Mr. Praduman kumar Aggarwal, Adv. | |
| | | VERSUS | |
| $ | Ravinder Seth | ..... | Respondent |
| ^ | through: | Mr. G.D.Gandhi, Advocate | |

% DATE OF DECISION: 07.08.2007

**CORAM:**

* **Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment?

2. To be referred to the Reporter or not?

3. Whether judgment should be reported in Digest?

: **PRADEEP NANDRAJOG, J.** (Oral)

1. It is an unfortunate case where a brother of a deceased brother is predating on the assets of his deceased brother.

2. Late Harish Chander Seth died leaving behind Vijay Laxmi as his widow and 2 children. He had applied to DDA for allotment of 60 sq. mtrs. plot under DDA Rohini Residential Scheme and in respect whereof he held a registration in his favour vide registration No.25799 dated 24.4.1981. He had deposited Rs.5000/- with DDA.

3. One would have expected Ravinder Seth, brother of Harish Chander Seth to have cared for his widowed sister-in-law and the minor children of his late brother. But far from so doing, under cover of his mother and using the shoulders of his mother, he picked up arms against his widowed sister-in-law.

4. Since the deceased was a Hindu and as per the Hindu Succession Act, mother, wife and children of a deceased male are Class-I legal heirs, a suit came to be filed in the name of the mother of the deceased claiming 1/4$^{th}$ share in the estate of her deceased son. Ravinder Seth acted as the attorney of his mother.

5. Needless to state, the defendants of the suit were the widow and the children of deceased Harish Chander Seth.

6. Pertaining to the registration obtained by Harish Chander Seth under DDA's Rohini Residential Scheme, an order dated 6.4.1992 directing status quo to be maintained was passed in said suit.

7. The widow of the deceased had petitioned the court of

competent jurisdiction in Delhi praying that a succession certificate be granted to her in respect of the movable estate of the deceased.

8. Since DDA had yet to allot a plot to the deceased, and at the stage when application for issuance of a succession certificate was filed, right available was no more than to claim succession under the registration. Thus, widow of deceased Harish Chander Seth while seeking a succession certificate mentioned that she was seeking succession to the registration vide registration No.25799 dated 24.4.1981.

9. It is not in dispute that mother of Harish Chander Seth was served with a notice in the application seeking issuance of a succession certificate and that she even appeared before the court concerned.

10. Whereas learned counsel for Ravinder Seth states that the mother made a limited statement before the Judge concerned to the effect that she does not oppose grant of a succession certificate in the name of her daughter-in-law, but he claims that his mother specifically excluded therefrom the right to succeed to the benefits of the registration enuring in the name of the deceased pertaining to DDA registration No.25799 dated 24.4.1981.

11. Be that as it may, the learned Judge while granting a succession certificate to the widow of the deceased described vide Sr. No.4.a the following as a security to which the applicant was

entitled to succeed to the estate of the deceased:-

'4.a Registration receipt of DDA No.25799 dt.24.4.1981 .....Rs.5000/-'

12. Armed with the aforesaid succession certificate, the widow of the deceased moved an application with DDA requesting that her name be mutated in the record of DDA as a successor to her husband pertaining to the registration which was enuring in the name of the deceased.

13. Asma Manzar, Director (RL) DDA put up a notice on 19.10.2001. The same reads as under :-

> "This is a public hearing case I have called the file. The applicant informed that she has already submitted orders of competent court vide which she has been declared successor in respect of registration receipt of DDA No.25799 dated 24.04.1991 as such she should not be asked to give relinquishment deed. I have gone through the file and found that in view of the orders we should not insist for relinquishment deed however, the Senior Law Officer may please examine and advise."

14. Processing the note, Shri B.K.Gupta, then functioning as Sr.Law Officer in DDA penned a note recording as under :

> "Above note of director RL refers this matter succession certificate in respect of registration receipt of DDA No.25799 dated 24.04.91 has been granted in favour of Mrs. Vijay Laxmi Seth W/o Late Sh. Harish Chander in petition No.272 of 95 vide judgment dated 12.05.99 (placed) as page No.55 to 61/C) moreover the objector Smt. Sheela Devi mother of deceased S h. Harish Chander Seth, compromised with applicant (kindly see the copy of the judgment). In view of the above there is no need for relinquishment deed from the mother of the deceased. However, further you/action may be taken in favour of Smt. Vijay Seth W/o Late Sh. Harish Chander and both minors (1) Master Karan Seth (2) Master Arjun Seth, through their natural guardian i.e. mother.

However, may also see please."

15. Picking on the 2 notes by the 2 officers afore-noted, Ravinder Seth, stating that he was the constituted attorney of his mother, filed a complaint, inter-alia, invoking Sections 193, 199, 420, 109, 114, 34 and 120-B IPC.

16. He stated in the complaint that order passed in favour of his mother on 6.4.1992 directing status quo to be maintained was violated by said officers and that the effect of the 2 notes was to fabricate evidence in favour of the widow of the deceased, intended to be used in civil proceedings i.e. the suit filed by his mother for partition of the estate of her deceased son.

17. Taking cognizance of the said complaint, vide order dated 31.1.2005, learned M.M. has proceeded to summon Azma Manzar and B.K.Gupta.

18. The 2 have challenged the summoning order by way of the 2 captioned petitions.

19. At the forefront of the challenge to the summoning order is the bar of Section 195 Cr.P.C. pressed into service be learned counsel for the petitioner.

20. Drawing attention of this court to Section 195(1)(b)(i) learned counsel states that in relation to an offence under Section 193 or Section 199 of the Indian Penal Code, no court can take



cognizance thereof save and except where the complaint is in writing

by the court concerned or by such officer as the court may authorize in writing.

21. As a back up to the challenge it is urged that under Section 381 of the Indian Succession Act, 1925 the effect of a certificate with respect to the debts and securities specified therein has to be treated as final and binding as against the persons owning such debts or liabilities or such security.

22. I have perused the original file of DDA, not because law requires me to so do but to re-assure myself as to the bona fides of the action taken by the 2 officers.

23. I may note that in the reply filed by Ravinder Seth in the present proceedings he has filed true transcripts of the notings.

24. Thus, I may rely upon the notings as they have otherwise been made a part of my judicial record.

25. The 2 captioned notes which have constituted the cause of the 2 action evidence that officers of DDA were processing an application filed by Vijay Laxmi, widow of Harish Chander Seth and were considering whether DDA could accede to the request of the lady for transferring the registration in her favour based on the succession certificate.

26. No doubt, there was a court order requiring status quo to be maintained, but at the same time the officers had before them

a succession certificate issued by a court of competent jurisdiction.

27. I need not go into the issue whether the 2 officers decided rightly or wrongly for the reason what is in issue before me is their motive.

28. Question of their being any mala fide in the action of the 2 officers does not arise for the simple reason both officers were simply processing the file for further orders of the concerned officer.

29. Whereas Asma Manzar sought legal opinion as to how she should proceed ahead, the Senior Law Officer gave his opinion as per his understanding of the law.

30. Whatever may have been the statement made by mother of Ravinder Seth before the Administrative Civil Judge to whom the petition praying for issuance of the succession certificate by wife of the deceased was filed, the fact of the matter remains that a court of competent jurisdiction had granted to Vijay Laxmi a succession certificate.

31. Right to receive benefits under a registration to immovable property is a valuable right and is capable of being succeeded to.

32. As long as a formal allotment was not made, right to succeed was a right to succeed under the registration and no more. Thus, succession certificate obtained by the widow of Harish Chander was a complete entitlement to seek mutation of the name

as the registrant.

33. I fail to understand as to to which substantive offence Section 109 or Section 114 of the Indian Penal Code stand attracted in the facts and circumstances of the instant case.

34. As I read the complaint, and whatever meaning I can assign thereto, the author of the complaint intends to convey that the abetment is to the offence under Section 193 and 199 of the Indian Penal Code.

35. If that be so, in the teeth of Section 195 of the Code of Criminal Procedure there was no question of the court entertaining the complaint.

36. Learned counsel for the respondent urges that it is settled law that any person can put into motion the process of the criminal law.

37. I am afraid, the sweeping statement made by learned counsel is in sweet ignorance of the principles of criminal law.

38. For example, provisions relating to adultery give locus standi only to the aggrieved spouse and to none else.

39. In the teeth of the mandate of the legislative provision enshrined under Section 195 of the Code of Criminal Procedure which categorically records that no court shall take cognizance of the offences specified in sub-clauses 'a' and 'b' thereof except on the

complaint in writing by a court or by such officer of the court as



the court may authorize, the submission made by learned counsel for the respondents cannot be countenanced.

40. The inevitable conclusion must follow.

41. Summoning order dated 31.1.2005 is quashed.

August 07, 2007 **PRADEEP NANDRAJOG, J.**
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